

Stewart Title

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RECORDED REQUESTED BY:

Carson Town Center, Inc.  
One Houston Center, Suite 600  
1221 McKinney Street  
Houston, Texas 77010-2015  
Attn: Mr. Russell M. Bayliss

RECORDED/FILED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA

9:41 AM JUL 18 1995

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
Region IV, Site Mitigation Operations Branch  
245 W. Broadway, Room 425  
Long Beach, California 90802-4444  
Attention: Hamid Saebfar

FEES 178  
58

AGREEMENT TO RESTRICT USE OF PROPERTY AND COVENANTS NOT TO SUE

This AGREEMENT AND COVENANT (the "Agreement") made on the 6 day of July, 1995 by CARSON TOWN CENTER, INC., a California corporation ("CTC"), which is the owner of record of surface rights on certain real property situated in the City of Carson, County of Los Angeles, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), LASMO Oil & Gas, Inc., a Delaware corporation ("LOGI"), which is the responsible party for the Existing Contamination (hereinafter defined), and by the Department of Toxic Substances Control (the "Department"), with reference to the following facts:

RECITALS

A. The Property is an approximately 76 acre parcel comprising the Golden Eagle refinery site. The Property has been the site of a petroleum refinery (the "Refinery") and it contains hazardous substances.

B. The Refinery was formerly owned by Golden Eagle Refining Company, Inc. ("Golden Eagle"). The Refinery was demolished and removed in 1985.

C. In March 1990, Golden Eagle, a subsidiary of Ultramar, PLC entered into a Consent Order Agreement (Docket No. HSA-89/90-009) (the "Consent Order Agreement"), with the Department of Health Services (predecessor agency to the Department) for the investigation and characterization of any chemical releases to the soil, air and groundwater and the preparation of a remedial action plan for the Golden Eagle Refinery site.

D. In December, 1991, LASMO plc, the corporate parent of LOGI, acquired Ultramar, PLC and its subsidiary, Golden Eagle.

E. In December, 1991, LOGI, as successor through corporate takeover to Golden Eagle, assumed responsibility for remediation of the Property.

F. In December, 1991, CTC was formed by individuals unaffiliated with LOGI to hold record title to the Property. CTC is now the record owner of the Property and, in October of 1994, became the wholly-owned subsidiary of LOGI.

G. On September 29, 1993, the California Regional Water Quality Control Board, Los Angeles Region (the "Board") issued a Clean-Up and Abatement Order No. 93-061, requiring LOGI to clean up and abate the soil and groundwater at the former Golden Eagle Refinery site.

H. Between 1986 and June of 1995, various other orders and requirements respecting the Existing Contamination have been issued by the Department and the Board.

I. The Existing Contamination (hereinafter defined) has been and is in the process of being remediated pursuant to that Final Remedial Action Plan for the former Golden Eagle Refinery site, Carson, California, dated July 6, 1994, prepared for LOGI by The Earth Technology Corporation (the "Plan").

J. LOGI and CTC have entered into an Operation and Maintenance Agreement (the "O&M Agreement") with the Department, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "B", which governs the operation and maintenance of the landfill cap, landfill gas collection treatment system and air sparging/vapor extraction system (the "Remediation System") on the Property, which O&M Agreement may be amended from time to time by the Department, LOGI and CTC, for the remediation of the soil on and the groundwater beneath the Property.

K. The Property is located at 21000 South Figueroa Street on the western edge of the City of Carson, California, just east of the Harbor Freeway (Interstate 110) and about one mile south of the Harbor Freeway (Interstate 110)/San Diego Freeway (Interstate 405) interchange. The Property is bounded by Torrance Boulevard to the north, Figueroa Street to the west, Main Street to the east, and 212th Street and residential property to the south.

L. The area surrounding the Property is zoned for ML (Manufacturing, Light) and ML-ORL (Manufacturing Light, Organic Refuse Landfill), except for a residential area south of the Property. Presently, the Refinery's operational surface structures (buildings, processing equipment, storage tanks, etc.) and the subsurface structures (storage tanks, pipes, etc.) have been

dismantled and removed from the Property. The Property remains undeveloped and no facilities exist on the Property, except for a flare station in the northeast corner of the Property. A clay cap covered by asphalt is present over a 10-acre landfill in the northeast corner of the Property.

M. CTC intends to develop the Property as an integrated retail shopping center (i.e. with respect to an approximate 40-acre parcel comprising a portion of the Property) and for other retail and/or light industrial, manufacturing, office, research and development or general commercial purposes (the "Intended Uses"), as more specifically detailed in the Conditions of Approval to Ordinance No. 94-1-44 of the City of Carson adopting the Golden Eagle Center Specific Plan No. 3-90 (the "Specific Plan"), which conditions include certification of the environmental impact report relating thereto.

N. In order to protect the present and future public health and safety, CTC desires, intends and believes that the Intended Uses of the Property shall (i) be pursued in such a manner as to prevent increased risk to persons or property which may result from the Existing Contamination (hereinafter defined), (ii) not materially interfere with implementation of the Plan, (iii) not materially interfere with the ability of LOGI and the Department to carry out their respective duties, rights and responsibilities contained within the Consent Order Agreement and the O&M Agreement, and (iv) not materially interfere with the operation and maintenance of the Remediation System and with other activities, components of which are subject to the O&M Agreement, except to the extent that the Department authorizes such interference. The phrase "materially interfere with implementation of the Plan" means an act which the Department determines would significantly reduce the capability of the Plan to contain the Existing Contamination (hereinafter defined), and thereby result in an increased risk to persons or property.

O. CTC believes that, based upon competent engineering and other data previously considered in connection with and prior to approval of the Specific Plan, the Intended Uses (and all activities anticipated to be undertaken in connection therewith) will not substantially increase the potential risk, if any, to persons or property from the Existing Contamination (hereinafter defined).

P. The Department has determined, on the basis of current information, that the Intended Uses, with the exercise of due care, will not likely aggravate or contribute to the Existing Contamination (hereinafter defined), and will not likely interfere with any future response actions at the Property.

Q. The Department wishes to encourage redevelopment of the Property. Accordingly, the Department intends to settle and resolve

the potential liability of Owners, Occupants and Lenders (hereinafter defined) for the Existing Contamination (hereinafter defined), provided that such Owners, Occupants and Lenders (i) did not cause or contribute to the Existing Contamination at the Property, (ii) do not otherwise cause or contribute to a release or threat of release of hazardous substances at the Property, and (iii) comply with the terms of this Agreement.

R. The Department has determined that this Agreement is fair, reasonable and in the public interest.

S. Pursuant to Section 25300 et seq. of the Health and Safety Code (the Hazardous Substance Account Act), the Department has statutory authority to enter into agreements whereby the Department covenants not to sue or assert claims for environmental remediation against prospective purchasers or tenants of environmentally impacted properties, if such agreements are sufficiently in the public interest to warrant expending the public resources necessary to reach such an agreement. The Department has also, in support of its granting of the Department Covenant hereunder, made the following determinations:

(i) The Plan, previously approved by the Department, provides for the Remediation System (i.e. air sparging, vapor extraction and monitoring) which is one of the best suited for clean-up of the Existing Contamination;

(ii) The Remediation System is a sophisticated air sparging/vapor extraction/monitoring system which is comprised of more than 200 wells;

(iii) The Remediation System, which also includes a landfill cap, is fully installed on the Property;

(iv) Preliminary operational and maintenance data indicate that the Remediation System is effectively working as designed to reduce contamination levels in the soil and groundwater underlying the Property;

(v) Substantial financial assurances have been committed by LOGI and LOGI's corporate parent in the forms of the letter of credit and corporate guaranty described in Recital T below, to ensure clean-ups of the existing contamination;

(vi) Additional financial assurances can be available from LOGI and/or LOGI's corporate parents if necessary to achieve clean-up of the Existing Contamination; and

(vii) LOGI has committed to operate and maintain the Remediation System pursuant to the provisions of the O&M Agreement.

T. The Department further believes a Department Covenant applicable to the Property is in the best interest of the public, based upon the following factors represented by LOGI and CTC respecting the Property:

(i) LOGI is financially viable and LOGI and CTC have entered into the O&M Agreement with the Department. In the O&M Agreement, LOGI and CTC agree, among other things, to operate and maintain the Remediation System (and modify it if necessary) pursuant to an Operation and Maintenance Plan dated June, 1995 (the "OMP"). In the Financial Assurances provisions of the O&M Agreement, LOGI has agreed to place with the California Environmental Protection Agency (for the benefit of the Department and the Board), pursuant to § 25360 of the Health and Safety Code, a letter of credit ("LOC") in the sum of \$5,164,062.00 comprised of the following: (a) \$2,873,388 based upon projected expenses for seven (7) years of operation and maintenance expenses for the Property (i.e. the Plan projects that the Remediation System will run from 4 to 7 years); (b) \$323,800.00 based upon projected expenses for seven (7) years of the Department's oversight costs for the Property; (c) \$70,000 based upon projected expenses for seven (7) years of the Board's oversight costs for the Property; and (d) \$1,896,874.00 to cover unanticipated expenses incurred in remediation of the Property, (e.g. additional years of operation and maintenance; equipment replacement). Additionally, in the Financial Assurances provisions of the O&M Agreement, LOGI agrees to provide additional guarantees and funding if reasonably required by the Department and/or the Board, to cover expenses of modifications, extended operation and maintenance of the Remediation System and other contingencies beyond those listed in (a) through (c) above;

(ii) LOGI has committed under the O&M Agreement to sustain the LOC (to the extent of \$3 million) for five (5) years following issuance by the Board of a "no further action" letter ("NFA Certification") and issuance by the Department of written notice that LOGI has complied with all terms of the OMP and Consent Order Agreement (collectively referred to as the "Approvals");

(iii) It is anticipated that, at the time of the Approvals, the remaining contamination at the Property

Property will be high molecular weight hydrocarbons which typically show low toxicity and mobility;

(iv) Ultramar PLC, LASMO plc's predecessor, has placed with the Board a corporate guaranty in the sum of \$1,400,000.00 to secure projected operation and maintenance expenses for the landfill located on the Property;

(v) LOGI has diligently undertaken extensive soil and groundwater remediation on the Property and has, under the Board's and the Department's supervision:

a. Excavated, removed, treated and backfilled in excess of 1,400,000 cubic yards of contaminated soil from the Property;

b. Obtained certification from the Board and the Department as to the top forty (40) feet of soil with respect to the entirety of the non-landfill portions of the Property; and

c. Incurred in excess of \$30 million to date in its clean-up of the Property, excluding demolition of the Refinery;

(vi) Since demolition of the Refinery in 1985, there has been no ongoing release of contaminants occurring on the Property; and

(vii) Approximately 40 acres of the Property is to be developed pursuant to the Specific Plan for retail and/or light industrial purposes, which will create a substantial benefit to the public (e.g., the estimated creation of approximately 2,000 jobs, estimated sales tax revenues of approximately \$1.9 million per year, estimated tax increment revenues of approximately \$800,000.00 per year, and enhanced recreational activities in the City of Carson). The Department Covenant will induce prospective purchasers, tenants or other users (and their respective financing institutions and investors) to participate in the redevelopment of the Property without becoming legally liable for the Existing Contamination (hereinafter defined).

U. The Department's willingness to grant the Department Covenant to CTC and any particular Owner, Occupant or Lender (hereinafter defined) is expressly conditioned upon the (i) granting by CTC and such Owner, Occupant or Lender of a reciprocal covenant not to sue pursuant to Section 4.02 hereof, (ii) execution, with respect to Owners and Occupants only, by each such Owner and Occupant of a certificate in the form attached hereto as

Exhibit "C" as provided in Section 3.05 hereof, and (iii) the further terms and provisions herein contained.

## ARTICLE I

### GENERAL PROVISIONS

1.01 Restrictions. This Agreement, including all exhibits, attachments or appendices thereto, all documents incorporated herein by reference, and all schedules and deadlines herein contained, attached hereto, or incorporated herein by reference (hereinafter defined) sets forth protective provisions, covenants (including the Department Covenant and Reciprocal Covenant), restrictions and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property. Each and all of the Restrictions shall also inure to the benefit of and pass with each and every portion of the Property, and shall apply to, benefit and bind the respective successors in interest thereof. Each and all of the Restrictions shall be for the benefit of, and enforceable by the Department, CTC, Owners, Occupants and Lenders (hereinafter defined), as their interests may appear. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Section 25355.5 and 25356.1 of the California Health and Safety Code, and shall run with the land pursuant to Section 25355.5.

1.02 Concurrence of CTC, Owners and Occupants Presumed. CTC, by its execution of this Agreement, and all Owners and Occupants (hereinafter defined) of any portion of the Property, by their execution of the Notice (hereinafter defined) and by their purchase, leasing, or possession of such Property, shall be deemed to be in accord with Section 1.01 hereof and to agree for and among themselves, their heirs, successors and assignees, and the agents, employees, and lessees of such owners, heirs, successors and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interests in the Property shall be subject to the Restrictions contained herein.

1.03 Parties Bound. This Agreement applies to and is binding upon, but only upon: (a) CTC, LOGI, Owners, Occupants and Lenders and their respective officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors and assignees, including but not limited to individuals, partners, subsidiaries, parent corporations and any other successors by merger or name change; and (b) The Department and any

successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement.

## ARTICLE II

### DEFINITIONS

2.01 Board. "Board" shall mean the California Regional Water Quality Control Board, Los Angeles Region, and shall include its successor agencies, if any.

2.02 CTC. "CTC" shall mean Carson Town Center, Inc., a California corporation, which, on the day this Agreement is entered, is the sole owner of record of surface rights in and to the Property and shall include any corporate successor (by corporate name change, merger or other corporate action) who succeeds to surface rights in the Property.

2.03 Covenants. "Covenants" shall refer jointly to the Department Covenant and the Reciprocal Covenant.

2.04 Department. "Department" shall mean the Department of Toxic Substances Control and shall include its successor agencies, if any.

2.05 Department Covenant. "Department Covenant" shall have the meaning set forth in Section 4.01 hereof.

2.06 Effective Date. "Effective Date" shall mean the date this Agreement is filed of record in the official land records maintained in Los Angeles County, California.

2.07 Existing Contamination. "Existing Contamination" shall mean any contamination caused by any hazardous substances, pollutants, or contaminants, or solid wastes present or existing at, on, or under (including within the groundwater beneath) the Property as of the Effective Date of this Agreement, including, without limitation, that contamination identified in the orders, plans, reports and other documents listed in Exhibit "D" hereto.

2.08 Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.

2.09 Lenders. "Lenders" shall mean those persons (whether individuals, banks, other financial institutions or other entities, including their respective officers, directors, shareholders, employees, agents, representatives, heirs and assigns) who, from and after the Effective Date, become beneficiaries under a deed of trust or lienholders under other lien



instruments covering any portion of the Property in the context of a bona fide financing transaction.

2.10 LOGI. "LOGI" shall mean LASMO Oil & Gas, Inc., a Delaware corporation (which is the responsible party for the Existing Contamination) and shall include any corporate successor (by corporate name change, merger or other corporate action).

2.11 Notice. "Notice" shall refer to that recordable notice, in the form of Exhibit "C" hereto, to be executed by each Owner and Occupant pursuant to Section 3.05 hereof.

2.12 Occupants. "Occupants" shall mean those persons (whether individuals, corporations or any other legal entities, including their respective officers, directors, shareholders, employees, agents, representatives, heirs and assigns) who, from and after the Effective Date, become entitled by leasehold or other legal relationship with CTC or an Owner to the legal right to occupy any portion of the Property. "Occupants" expressly (i) includes Lenders who have, through foreclosure or deed-in-lieu thereof or through lease or other arrangement with CTC or an Owner, the legal right to occupy any portion of the Property, (ii) includes a lessee of the Property in a sale-leaseback transaction, and (iii) excludes CTC and LOGI.

2.13 Owners. "Owners" shall mean those persons (whether individuals, corporations or other legal entities, including their respective officers, directors, shareholders, employees, agents, representatives, heirs and assigns) who are CTC's successors-in-interest with respect to CTC's surface rights in and to the Property, being those persons who hold title (whether legal or equitable) to all or any portion of the Property. "Owners" expressly (i) includes Lenders who, through foreclosure or deed-in-lieu thereof or through grant deed or other conveyancing instrument from CTC or an Owner, acquire title to any portion of the Property, (ii) includes a lessor of the Property in a sale-leaseback transaction, and (iii) excludes CTC and LOGI.

2.14 Plan. "Plan" shall have the meaning set forth in Recital I above.

2.15. Reciprocal Covenant. "Reciprocal Covenant" shall have the meaning set forth in Section 4.02 hereof.

2.16 Specific Plan. "Specific Plan" shall have the meaning set forth in Recital M above.

### ARTICLE III

#### DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. CTC, Owners and Occupants, separately and independently, promise not to use the Property for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing constructed or installed for use as permanently occupied human habitation;
- (b) A hospital for humans;
- (c) A school for persons under 21 years of age; or
- (d) A day care center for children, not including drop-in care provided by any Owner or Occupant whose primary business or activity is not provision of day care for children, while its clients and customers shop or otherwise avail themselves of the goods and services provided by such Owner or Occupant.

3.02 Enforcement. Failure of CTC or any Owner or Occupant to comply with Section 3.01 hereof shall be grounds for the Department to file a legal action against CTC or such noncomplying Owner or Occupant as provided by law. This Agreement shall also be enforceable by the Department pursuant to Chapters 6.5 and 6.8, Division 20 of the California Health and Safety Code, including the right of the Department to seek the imposition of civil or criminal sanctions, as allowed by law.

3.03 Right of Access. CTC, Owners and Occupants hereby grant unto (i) the Department its authorized officers, employees, representatives, and all other persons performing response actions under Department oversight, an access easement to enter upon the Property at reasonable times and in a reasonable manner to monitor and inspect the integrity of the Remediation System and to exercise its other rights and responsibilities under the Plan, the Consent Agreement and/or the O&M Agreement, and (ii) LOGI and its authorized officers, employees, representatives, and all other persons performing response actions on behalf of LOGI or its successors an access easement to enter upon the Property at reasonable times and in a reasonable manner to operate and maintain the Remediation System and to exercise its responsibilities under the Plan, the Consent Order Agreement and/or the O&M Agreement. The Department acknowledges that the Property is to be developed for the Intended Uses and agrees that its easement rights hereunder shall not be exercised in a manner which would unreasonably interfere with the Intended Uses. Nothing in this Agreement shall be interpreted to limit the Department's authority under the Health and Safety Code and California Code of Regulations to take actions to protect the public health and safety or the environment.

3.04 Due Care/Cooperation. CTC, Owners and Occupants shall exercise due care at the Property with respect to the Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations. CTC, Owners and Occupants agree to cooperate fully with the Department in the implementation of response actions, the Plan, the O&M Agreement and the Consent Order Agreement and further agree not to interfere with such activities and the Remediation System. In the event CTC, Owners and Occupants become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or safety or the environment, CTC, Owners and Occupants shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under the Health and Safety Code, or any other law, immediately notify the Department of such release or threatened release.

3.05 Notices. Each Owner and Occupant shall, as a precondition to receiving the benefit of the Department Covenant, execute a written instrument in the form attached hereto as Exhibit "C", which shall accompany each purchase, lease, sublease or rental agreement relating to the Property.

3.06 Costs of Enforcement. CTC, or any Owner or Occupant that fails to comply with the terms of this Article III shall be liable for all enforcement costs, including, but not limited to, litigation costs, incurred by the Department to enforce the provisions of this Article III or otherwise obtain compliance.

#### ARTICLE IV

##### COVENANTS NOT TO SUE

4.01 Department Covenant. The Department hereby irrevocably and unconditionally (except as otherwise provided herein) covenants not to sue, not to execute judgment, nor to take any civil, judicial or administrative action, nor to establish any lien against, nor to pursue any claim, enter any order or make any demand against CTC, Owners, Occupants and Lenders for claims pursuant to section 107 of CERCLA, 42 U.S.C. §9607; section 7003 of RCRA, §7003, 42 U.S.C. §6973; or chapters 6.5 (commencing with section 25100) and 6.8 (commencing with section 25301), division 20 of the Health and Safety Code, or pursuant to other applicable laws, regulations or civil, judicial or administrative authorities, solely with respect to the Existing Contamination at the Property and arising solely from the ownership, operation or possession of the Property, or any portion thereof (the "Department Covenant"). This Department Covenant shall run with the land, and inure to the

benefit of, and pass with each and every portion of the Property, and shall benefit the respective Owners, Occupants and Lenders thereof.

This Department Covenant shall be separate and distinct with respect to CTC and each Owner, Occupant and Lender. This Department Covenant shall inure to the benefit of CTC subject to and only upon the complete and satisfactory performance by LOGI and CTC of their respective obligations under this Agreement and under the O&M Agreement (as applicable), including all exhibits, attachments and appendices hereto and thereto. Each Owner's, Occupant's and Lender's right to rely upon and benefit from this Department Covenant is expressly subject to and conditioned upon its own, and only its own, compliance with its obligations (as an Owner, Occupant or Lender as applicable) under this Agreement, including all exhibits, attachments and appendices hereto. This Department Covenant is specifically subject to the limitations and reservations set forth in Sections 4.03, 4.04, 4.05 and 4.06 hereof.

4.02 Reciprocal Covenant. For so long as CTC and each Owner, Occupant and Lender enjoys the benefit of the Department Covenant under Section 4.01 above (and irrevocably and perpetually thereafter if the Department Covenant is inapplicable by virtue of Section 4.03 below), CTC, Owners, Occupants and Lenders hereby covenant, separately and independently, not to (a) contest the Consent Order Agreement, the Plan or O&M Agreement (except that CTC may exercise any rights it has under the O&M Agreement) or (b) sue, and not to assert any claims or causes of action against the State of California with respect to the environmental condition of the Property based upon: (i) any direct or indirect claim for reimbursement from the Hazardous Waste Control Account, Hazardous Substance Account, or Hazardous Substance cleanup Fund through Health and Safety Code section 25375 or any other provision of law; (ii) any claim against the State of California under Sections 107 or 113 of CERCLA or Section 7003 of RCRA; (iii) any other claims arising out of the Department's oversight activities at the Property conducted under the O&M Agreement and applicable law (the "Reciprocal Covenant"). This Reciprocal Covenant is made and given, effective upon execution by CTC of this Agreement and of a Notice by each Owner and Occupant, and does not extend to or bind any other persons; provided, that Lenders (unless they have become Owners or Occupants pursuant to Sections 2.12 and 2.13 above) shall not be required to execute Notices but shall be deemed to have made the Reciprocal Covenant as a precondition to receiving the protection of the Department Covenant.

4.03 Specific Reservation of Rights by the Department. Notwithstanding the express provisions of Section 4.01 above or any other provision of this Agreement, the Department reserves the right to assert, and the Reciprocal Covenant under Section 4.02 above is without prejudice to, any claims, causes of action or

other civil, judicial or administrative proceedings relating to the acts or omissions of CTC or of any particular Owner, Occupant and/or Lender arising after the Effective Date and which may give rise to liability under applicable law, relating to any:

(A) Release or threat of release of hazardous substances, pollutants or contaminants, other than the Existing Contamination, resulting from CTC's or that particular Owner's or Occupant's ownership, operation, use, or development of the Property;

(B) Introduction by CTC or by a particular Owner or Occupant of any hazardous substance, pollutant or contaminant, not including the Existing Contamination, to the Property after the Effective Date;

(C) Interference by CTC or by a particular Owner or Occupant with LOGI's operation and maintenance activities undertaken pursuant to the O&M Agreement and any failure of CTC or of a particular Owner or Occupant to cooperate, as required by Section 3.04, with the Department, its employees, agents, contractors or authorized representatives or with LOGI conducting response activities under the Department's direction and oversight at the Property;

(D) Transportation and disposal after the Effective Date by CTC or by a particular Owner or Occupant of hazardous substances from the Property;

(E) Exacerbation or releases of the Existing Contamination after the Effective Date by CTC or by a particular Owner or Occupant caused by (i) the willful misconduct, recklessness or negligence of CTC, or by such Owner or Occupant or Lender, or (ii) CTC or by such Owner or Occupant through activities on the Property which are incompatible with, or unnecessary in the pursuit of, the Intended Uses; including, but not limited to, the creation of a source of contamination (e.g., surface or subsurface runoff and migration, etc.) associated with such wrongful, reckless, negligent or unauthorized activities at the Property;

(F) Failure to exercise due care after the Effective Date by CTC or by a particular Owner or Occupant with respect to any hazardous substances, pollutants or contaminants at the Property, including, but not limited to the Existing Contamination.

(G) Criminal liability of CTC or of a particular Owner or Occupant.

(H) With respect to claims against CTC only, such claims which are based on failure of CTC and/or LOGI to meet a requirement of this Agreement, including the O&M Agreement attached as Exhibit "B".

(I) Liability for damages for injury to, destruction of, or loss of natural resources.

The foregoing specific reservations by the Department shall be separately and distinctly applied with respect to CTC, and each Owner and Occupant, the intent being that none of the foregoing actions or events applicable to a particular Owner or Occupant shall render the Department Covenant inapplicable to CTC or to any other Owner or Occupant. Nothing contained in this Section 4.03 shall be deemed a waiver of or release by CTC or by any Owner, Occupant and/or Lender of any defense, cross-claim, counterclaim, offset or other rights available to CTC or such Owner, Occupant or Lender (at law or in equity) in response to any claim or cause of action brought by the Department, as specifically reserved hereunder. The foregoing specific reservations by the Department also apply to any Lender who participates in management of the Property for purposes of 42 USC Section 9601 (20) (A) and who, after the Effective Date, commits an act or omission in (A) through (I) above. The foregoing specific reservations by the Department shall not be construed to expand the scope of the Department Covenant contained in Section 4.01. If CTC and/or any Owner, Occupant or Lender is determined, through adjudication or the administrative or the regulatory processes, to have committed an act or omission after the Effective Date for which the Department has specifically reserved its rights in (A) through (I) above, CTC (if it was so determined to have committed the act or omission) or the particular Owner, Occupant or Lender that was determined to have committed the act or omission, shall be liable for all enforcement costs, including, but not limited to, litigation costs, incurred by the Department in conjunction with that act or omission.

4.04 Reservation of Rights as to Other Parties. The Department Covenant contained in Section 4.01 is made and given solely for the benefit of CTC, Owners, Occupants and Lenders, and for no other persons. The Department reserves the right to assert all claims or causes of action against any other person, firm, corporation, or any other entity, including its officers, directors, shareholders and employees, for any claims associated with the Property, and for any other relief to which the Department may be entitled at law or in equity.

4.05 Reservation of Rights as to Unknown Conditions or New Information. The Department Covenant contained in Section 4.01 does not apply (and the Department reserves the right to seek modification of this Agreement or to institute an action under federal or state law, or to take administrative action against any person), if previously unknown conditions are discovered or information is received, in whole or in part, after the Effective Date, and these previously unknown conditions or this new information demonstrate that CTC or a particular Owner or Occupant is liable for the Existing Contamination for reasons other than

that liability that may be incurred solely by virtue of holding or acquiring an interest in the Property (as is expressly contemplated in Section 4.01 above). This reservation shall apply only to that Owner or Occupant with respect to whom such unknown conditions discovered hereunder pertain.

4.06 Department's Reservation of Rights Against LOGI. As more particularly described in Recitals S and T above, the Department has determined that its granting of the Department Covenant is in the best interest of the public based primarily upon the status of LOGI's clean-up of the Existing Contamination, coupled with LOGI's financial assurances sufficient to complete remediation of the Existing Contamination. The Department specifically reserves all rights under applicable law to name LOGI (including LOGI's corporate parents) in any enforcement action, civil or administrative proceeding respecting the Existing Contamination. In this regard, LOGI, for itself and for its corporate parents, subsidiaries (except CTC), partners and any other successors by merger, corporate name change or other corporate action, expressly disclaims any right to or benefit in the Department Covenant which might be otherwise claimed as an affiliate of CTC.

## ARTICLE V

### AMENDMENT, TERMINATION AND VARIANCE

5.01 Amendment, Termination and Variance. CTC, any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written amendment to the provisions of this Agreement or for a termination or variance of the Restrictions as they apply to all or any portion of the Property, and the Department's approval shall not be unreasonably withheld. Any amendment to the Agreement or termination or variance of Restrictions which results from any such application shall apply only to CTC or to that Owner or Occupant who made application for the same. Any such application for variance or termination shall be made and shall proceed in accordance with Sections 25233 or 25234 (as applicable) of the Health and Safety Code. The Department may also propose to CTC, Owners and Occupants (with the Owner's consent), written amendments to the Agreement or termination or variance of Restrictions and the approval of CTC and/or the particular Owners and Occupants shall not be unreasonably withheld. Any amendment, termination or variance pursuant to this Section 5.01 must be in writing and signed by the Department and CTC and/or such Owners and/or Occupants affected thereby.

5.02 Term. This Agreement shall continue in effect, unless terminated in accordance with Section 5.01 above, by operation of any law or otherwise.

## ARTICLE VI

### MISCELLANEOUS

6.01 No Dedication Intended. Nothing set forth herein shall be constructed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for purposes whatsoever.

6.02 Notices. Whenever any person gives or serves any notice, (other than the Notice in the form of Exhibit C attached hereto) demand or other communication with respect to this Agreement, each such notice, demand or other communication shall be in writing and shall be deemed effective (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, (ii) three business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested, or (iii) one business day after delivery by facsimile or other electronic transmission, with confirmation of successful delivery to the facsimile number provided below.

To CTC: Carson Town Center, Inc.  
One Houston Center, Suite 600  
1221 McKinney Street  
Houston, Texas 77010-2015  
Attention: Russell M. Bayliss  
Telephone: (713) 654-8500  
Fax: (713) 654-8590

To LOGI: LASMO Oil & Gas, Inc.  
One Houston Center, Suite 600  
1221 McKinney Street  
Houston, Texas 77010-2015  
Attention: Russell M. Bayliss  
Telephone: (713) 654-8500  
Fax: (713) 654-8590

To the Department of Toxic Substances Control  
Department: Region IV, Site Mitigation Operations Branch  
245 West Broadway, Suite 425  
Long Beach, California 90802  
Attention: Golden Eagle Refinery Project Manager  
Telephone: (310) 590-4868  
Fax: (310) 590-4922



To Owners and/  
or Occupants:

At such legal address as is set forth  
in the Notice to be executed by each  
Owner and Occupant pursuant to  
Section 3.05 above.

6.03 Partial Invalidity. If any portion of this Agreement is determined to be invalid for any reason, the remaining portions shall remain in full force and effect as if such portion had not been included herein.

6.04 Article Headings. Headings at the beginning of each numbered article of this Agreement are solely for the convenience of the parties and are not a part of the Agreement.

6.05 Recordation. This instrument shall be executed by CTC, LOGI and the Department. This instrument shall be recorded by CTC in the County of Los Angeles prior to the recordation of any conveyance of, or execution of any lease of, any portion of the Property by CTC in favor of any Owner or Occupant. CTC shall also file a copy of this Agreement, together with all exhibits, attachments and appendices thereto, with the City of Carson, Community Development Department, within ten (10) days of the date of execution. Any amendments to this Agreement and the O&M Agreement shall likewise be recorded in the County of Los Angeles and a copy of same filed with the City of Carson.

6.06 References. All references to the Health and Safety Code, California Code of Regulations and any federal code sections include successor provisions.

6.07 Authority. The execution of this Agreement has been duly authorized on behalf of CTC, LOGI and the Department and constitutes the binding obligation of each such entity and agency.

6.08 Jurisdiction. The Department acknowledges that the Board and it are the agencies of the State of California having jurisdiction over the investigation and clean-up of the Existing Contamination on the Property. The Department agrees that, until such time as either the Board or it is designated the "administering agency" with exclusive oversight jurisdiction over the Property (pursuant to Sections 25260 - 25268 of the Health and Safety Code promulgated under the Hazardous Substance Act), it shall coordinate with the Board their respective oversight activities and will not issue inconsistent or duplicative instructions or orders regarding the Property. If LOGI, CTC, the Department, the Board, or any Owner or Occupant believes that any such inconsistency or duplication has occurred, that party may request dispute resolution pursuant to Section VII of the Memorandum of Understanding dated August 1, 1990 between the

Department of Health Services, the State Water Resources Control Board and the Regional Water Quality Control Board.

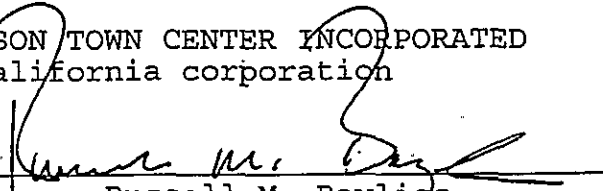
6.09 Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties and filed in the official land records maintained in Los Angeles County, California; each such counterpart being deemed an original but all counterparts constituting a single instrument.

6.10 Governing Law. This Agreement shall be construed and governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties execute this Agreement as of the date set forth above.

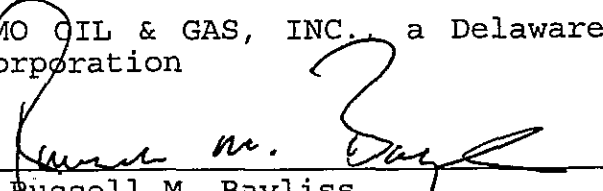
"CTC"

CARSON TOWN CENTER INCORPORATED  
a California corporation

By:   
Russell M. Bayliss,  
Vice President

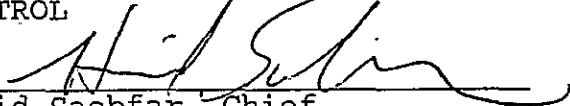
"LOGI"

LASMO OIL & GAS, INC., a Delaware  
corporation

By:   
Russell M. Bayliss,  
Vice President

"The Department"

DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL

By:   
Hamid Saebfar, Chief  
Site Mitigation Operations Branch  
Regions 3 and 4

95 1158615

STATE OF California )  
COUNTY OF Los Angeles ) ss.

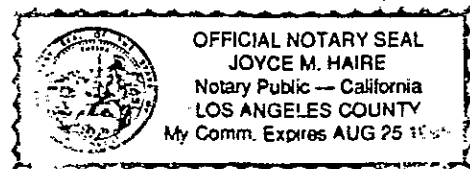
Before me, the undersigned, a Notary Public in and for said County and State, on this 6<sup>th</sup> day of July, 1995, personally appeared Russell M. Bayliss, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing Agreement to Restrict Use of Property and Covenants Not to Sue as Vice President for Carson Town Center, Inc. and acknowledged to me that he executed the same as his free and voluntary act and deed of the corporation for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written.

Joyce M. Haire  
Notary Public

My Commission Expires:

August 1995



95 1158615

STATE OF California )  
COUNTY OF Los Angeles ) ss.

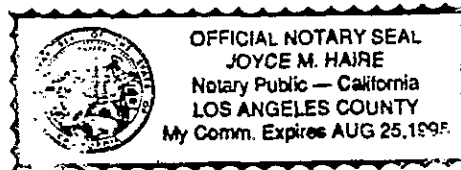
Before me, the undersigned, a Notary Public in and for said County and State, on this 6<sup>th</sup> day of July, 1995, personally appeared Russell M. Bayliss, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing Agreement to Restrict Use of Property and Covenants Not to Sue as Vice President for LASMO Oil & Gas, Inc. and acknowledged to me that he executed the same as his free and voluntary act and deed of the corporation for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written.

Joyce M. Haire  
Notary Public

My Commission Expires:

August 25, 1995



95 1158615

STATE OF California )  
COUNTY OF Los Angeles ) ss.

Before me, the undersigned, a Notary Public in and for said County and State, on this 6<sup>th</sup> day of July, 1995, personally appeared Hamid Saebfar, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing Agreement to Restrict Use of Property and Covenants Note to Sue as Chief, Site Mitigation Operations Branch and acknowledged to me that he executed the same as his free and voluntary act and deed of the Department of Toxic Substances Control for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written.

Joyce M. Haire  
Notary Public

My Commission Expires:

August 25, 1995

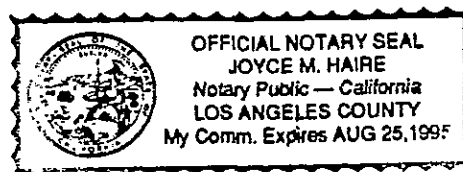


EXHIBIT A

The Property referred to in this Covenant is stipulated in the County of Los Angeles, State of California, and is described as follows:

Lots 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 of Tract No. 6378, in the City of Carson, County of Los Angeles, State of California per map recorded in book 68 Pages 1 and 2 of Maps, in the office of the County recorder of said County.

EXCEPT from said Lots 26, 27, 28, and 29 those portions thereof included within Figueroa Street 100 feet wide, as conveyed to the State of California, recorded August 9, 1935, in Book 13459 Page 359 of Official Records, in said office of the County.

ALSO EXCEPT therefrom that portion of said lot 22 lying Westerly of the following described line:

Beginning at a point in the Northerly line of said Lot 22, distant Easterly along said Northerly line 165.00 feet from the Northwest corner of said Lot 22; thence Southwesterly in a direct line to a point in the South line of said Lot 22, distant thereon 25.00 feet Easterly from the Southwest corner of said Lot 22.

ALSO EXCEPT therefrom those portions of said Lots 22 and 26 lying Westerly of the following described line:

Beginning at a point in the North line of said Lot 22, distant along said line North 89 degrees 24 minutes 07 seconds East 187.02 feet from the Northwest corner of said Lot 22; thence South 11 degrees 50 minutes 19 seconds West 595.01 feet to the point of tangency with a curve concave Easterly, having a radius of 1450.00 feet; thence Southerly along said curve through an angle of 12 degrees 25 minutes 38 seconds an arc distance of 314.50 feet to the point of tangency of said curve with the East line of Figueroa Street, 100 feet wide.

ALSO EXCEPT from the remainder those portions of said Lot 22 described as Parcels 13-5 and 6-5 in the final decree of condemnation entered in Case No. 901, 401 Superior Court, in the State of California, in and for the County of Los Angeles, a certified copy thereof being recorded on April 1, 1969, as Instrument No. 7334, in Book D4325 Pages 345 and Official Records.

ALSO EXCEPT therefrom all oil, gas and other hydrocarbon substances, and all other minerals in and under all of said real property, located below five hundred (500) feet from the surface of said real property, together with the perpetual and exclusive right of subsurface passage through all of said real property below said depth of five hundred (500) feet from the surface, for the purpose of drilling an unlimited number of wells and the producing of oil, gas and other hydrocarbon substances and other minerals from said real property, as reserved in deed recorded April 3, 1958, as Instrument No. 1679, Official Records.